

REMARKS

In an Office Action dated 22 April 2004, the Examiner objected to the numbering of the claims under 37 CFR 1.126. The Examiner also rejected claims 1 – 7, 25, 38 – 41, 8 – 14, and 34 – 37 under 35 U.S.C. §112, second paragraph, and claims 23 – 33 under 35 U.S.C. 102(e) as being anticipated by published Patent Application WO 00/02389 to McAllan. The Examiner also noted that claims 1 – 14 and 31 – 41 would be allowable if amended to overcome the rejections under 35 U.S.C. §112. Applicant has submitted the correct set of claims presently in prosecution and has amended claims 1 – 3, 11 – 27, 32, and 33 of the originally submitted claims 1 – 33.

The Examiner correctly objected to the numbering of the claims under 37 CFR 1.126. This is due to the fact that the claims submitted in the Preliminary Amendment dated 10 January 2003 were not the claims in prosecution in this application. In order to eliminate the confusion created by this error, Applicant respectfully requests that the Preliminary Amendment of that date be withdrawn due to the fact that the claims presented therein were not the claims then in prosecution in this application. The Examiner examined the correct set of claims 1 – 33 and the response set forth herein is based upon these claims, not the incorrect set of claims of 10 January 2003. In this regard, Applicant has also resubmitted the new claims and now has them correctly numbered as being numbered after claim 33, the last claim presented in this application. Thus, the claims in prosecution are claims 1 – 41.

The Examiner rejected claims 1 – 7, 25, 38 – 41, 8 – 14, and 34 – 37 under 35 U.S.C. §112, second paragraph. The Examiner also noted that claims 1 – 14 and 31 – 41 would be allowable if amended to overcome the rejections under 35 U.S.C. §112. Applicant has amended these claims to correct the errors noted in the Examiner's remarks and believes that claims 1 – 22 and 34 – 41 are now allowable under 35 U.S.C. §112, second paragraph. In amending the claims, the Examiner's pertinent remarks regarding the newly submitted claims in the Preliminary Amendment were taken into account and revised newly submitted claims are included herein that include changes that are responsive to the Examiner's rejections.

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The Examiner rejected claims 23 – 33 under 35 U.S.C. 102(e) as being anticipated by published Patent Application WO 00/02389 to McAllan, noting with respect thereto:

Regarding claim 23, Mcallan discloses an information access with targeted marketing capability. The international master server 1-fig. 1 receives news and entertainment content from content providers, and transmits the content to a cellular carrier 2-fig. 1 to the cellular network 5, see page 3-line 20 to page 4-line 9.

program manager means (the international master server 1-fig. 1) for receiving program content (the content from content provider/advertiser 1-fig. 1, see page 3-line 20 to page 4-line 9) from a plurality of program sources;

Spatial temporal content manager means (the server 1 inherently includes circuits and software modules for selecting at least one cell from the cellular network 5 via the cellular carrier 2-fig. 1) for selecting at least one of the plurality of cell sites to provide a communiqué communication service; and

router means for routing program content from at least one of the plurality of program sources to the selected at least one of the plurality of cell sites for transmission via a one of said plurality of wireless communication channels to a plurality of wireless subscriber devices served by said selected at least one of said plurality of cell sites to provide said communiqué communication service (the server 1 inherently includes routing means for routing to other regional servers 3-fig. 3, or to cellular network 3-fig. 2).

Applicant has amended Independent claim 23 to further limit the differences between Applicant's claimed invention and the cited McAllan reference as follows:

A communiqué system for providing a communiqué, constituting program content concurrently delivered to a plurality of subscribers, who are equipped with wireless subscriber devices, via a cellular communication network that includes a plurality of cell sites, each of which provides a plurality of wireless communication channels in a cell that covers a predetermined volume of space around a cell site transmitting antenna, comprising:

program manager means for receiving program content from a plurality of program sources;

processor means for selecting at least one of said plurality of cell sites to provide a communiqué to a plurality of subscribers who are authorized to receive said communiqué and who are served by said selected cells, independent of the presence of subscribers who are

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authorized to receive said communiqué and who are served by other cells of said cellular communication network; and

router means for routing program content, constituting said communiqué, from at least one of said plurality of program sources to said selected cell sites for concurrent transmission to a plurality of wireless subscriber devices of subscribers who are authorized to receive said communiqué and who are served by said selected cells, in at least one of said selected cells said transmission to said plurality of wireless subscriber devices being effected concurrently to more than one of said plurality of wireless subscriber devices via a one of said plurality of wireless communication channels.

Applicant believes that the amendments to independent claim 23 renders this claim allowable under 35 U.S.C. 102(e) over the cited McAllan reference. In addition, Applicant believes that dependent claims 24 – 33 are also allowable under 35 U.S.C. 102(e) over the cited McAllan reference, since these claims depend on an allowable base claim.

In summary, Applicant has amended claims 1 – 3, 11 – 27, 32, and 33 and believes that claims 1 – 41 are now allowable.

Applicant requests a Notice of Allowance in this application in light of the amendments set forth herein. The undersigned attorney requests Examiner Duc Ho to telephone if a conversation could expedite prosecution. Applicant authorizes the Commissioner to charge any additionally required payment of fees to Deposit Account No. 50-1848.

Respectfully submitted,
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